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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: HMO - 203808

PRELIMINARY RECITALS

Pursuant to a petition filed on November 29, 2021, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on January 18, 2022, by telephone.

The issue for determination is whether the agency, by its HMO agent, correctly modified petitioner's request for personal care worker (PCW) services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Michelle Rocca, by written submission
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 55-year-old resident of Milwaukee County who lives alone.
2. Petitioner is enrolled as a member with Network Health HMO.
3. Petitioner was injured in 2017 and diagnosed with post-concussion syndrome with symptoms including severe, unmanageable headaches.
4. On August 3, 2021, the provider Buford Personal Care LLC completed a Personal Care Screening Tool to assess petitioner's needs for personal care worker assistance
5. On August 3, 2021 a physician plan of care was created for petitioner, for the period from September 7, 2021 to September 6, 2022.
6. On September 28, 2021, petitioner's provider submitted a Prior Authorization (PA) Request form for 105 units per week and 96 units per year as needed of personal care worker services prescribed by [REDACTED], for two diagnosed conditions, low back pain and cervicalgia.
7. On September 29, 2021, an independent personal needs assessment of petitioner was conducted by Med Group Home Health Care.
8. The HMO approved the request for PCW services in part, modifying it to 69 units per week from the requested 105 units per week.
9. Petitioner appealed to the HMO's Grievance and Appeals Committee.
10. On October 18, 2021, the HMO's Medical Director completed an appeal advisor review and upheld the determination.
11. On November 4, 2021, the HMO issued to petitioner Notice of Decision on your Appeal, informing him that it upheld the decision to approve 69 units per week personal care worker services.
12. On November 29, 2021, the Division received petitioner's request for hearing by facsimile.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1) and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. The Code also provides that, "No more than one-third of the time spent by a personal care worker may be in performing housekeeping activities." Wis. Adm. Code, § DHS 107.112(3)(e).

Health maintenance organizations (HMOs) contractually rely on fee-for-service MA policy to set the minimum level of coverage for their MA eligible members. In determining the number of PCW hours to authorize, the agency uses the standard above along with the general medical necessity standard found at Wis. Adm. Code, § DHS 101.03(96m). Essentially the medical necessity standard requires a service to be basic and necessary for treatment of an illness, not necessarily the best service possible, and not just for convenience. To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool (PCST), a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The PCST allots a specific amount of time in each area the recipient requires help, which the agency's reviewer can then adjust to account for variables missing from the screening tool's calculations.

In the case of PCW services, MA pays only for medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). Covered PCW services include only the following:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code § DHS 107.112(1)(b).

To obtain a PA for personal care services, providers must submit documents that accurately and completely demonstrate the need for the requested personal care services. Providers must use the Personal Care Screening Tool (PCST) to determine the allocation of PCW time needed. The PCST is a tool that collects information on an individual's ability to accomplish activities of daily living, instrumental activities of daily living, medically oriented tasks delegated by an RN and the member's need for personal care worker assistance with these activities in the home. The PCST must be completed based on a face-to-face evaluation of the member in the member's home. The screener must directly observe the member performing the activity before selecting the member's level of need. A Personal Care Activity Time Allocation Table is used by providers to assist in prorating time for service specific activities provided by personal care workers.

Based on its PCST, the petitioner's provider determined that he required assistance with bathing and dressing, seven days per week; grooming set-up five days per week; eating three times per day, seven days per week and toileting seven days per week, all due to chronic pain. On petitioner's behalf, it requested 105 units (26.25 hours) per week of PCW services to assist with those activities of daily living (ADLs) and services incidental to ADLs.

On behalf of the HMO, Med Group Home Health Care conducted an in-home face to face independent personal needs assessment on September 29, 2021. Its RN either assisted with, observed, or discussed with petitioner all of the ADLs in the PCST and determined [REDACTED] personal care needs at 69 units per week. This determination took into account petitioner's PTSD due to a work injury in which he was hit in the head and has, as a result chronic headaches and dizziness. The HMO authorized 69 units (17.25 hours) per week based on this assessment.

The HMO agreed with the provider regarding bathing, dressing and grooming. It reduced eating assistance from 105 minutes per week to 0 because petitioner is able to feed himself. Set-up for meals is included in incidental time. He is able to feed himself. He did not dispute this. He testified that sometimes when his head hurts very badly, he is unable to prepare his meals. Set-up for meals is included in incidental time. The HMO reduced toileting assistance time from 50 minutes per day to 0 because this need is not documented in his plan of care and the RN did observe him demonstrate the ability to move on and off the toilet independently. Petitioner testified that he goes to the toilet 8 to ten times per day and 4 to 5 times at night. He failed to show that he needs assistance to do so. Similarly, the HMO reduced the

time for transfer assistance from 30 minutes per day to 0. The RN observed him transferring himself. There is no evidence that he cannot do so.

When prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6. In sum, the petitioner's provider has not provided evidence to support a different result than that determined by the HMO. Petitioner's testimony at hearing did not show additional hands-on PCW hours are medically necessary on a daily basis. Petitioner testified that he has headaches frequently, sometimes four times per day, and that they continue until his medication kicks in. It is not clear from his testimony and the documents and medical records submitted on his behalf how the pain prevents him from doing most ADLs without assistance.

During the visit, an RN went through each of the functional areas on the PCST with the petitioner, spoke with him regarding how he performs each activity of daily living, and obtained verbal and visual validation from him that he may need partial physical hands-on assistance from the personal care worker for some activities of daily living. This is not intended to diminish the challenges petitioner faces, but rather to explain that the documentation must be there to support the requested services. Based on the evidence before me, I conclude the HMO correctly modified the PA request.

CONCLUSIONS OF LAW

The agency, by its HMO agent, correctly modified petitioner's request for personal care worker (PCW) services.

THEREFORE, it is

ORDERED

That petitioner's appeal is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.


The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

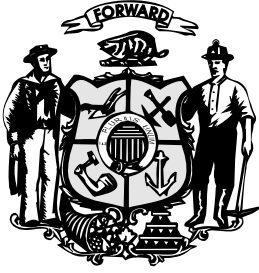
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 1st day of February, 2022

\s  _____

Beth Whitaker
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 1, 2022.

Division of Medicaid Services